

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JOSEPH M. WALLS,  
Petitioner,

V.

THOMAS CARROLL, Warden,  
Respondent.

Civil A. NO. 05-585-KAJ

**FILED**

NOV 22 2005

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

MOTION FOR RELIEF FROM ORDER

COMES NOW, Joseph M. Walls, who moves ~~this Court~~ pursuant to Civil R. 60(b)(1)(b) for relief from the Court's Order dated November 2, 2005, for the following reasons:

A. 28 U.S.C. 2241

1. The Court's Order recognized that the Petition sought "federal habeas corpus relief pursuant to 28 U.S.C. ... 2241" Order, p. 2.

2. The Court's Order then went on to dismiss the Petition "Pursuant to [28 U.S.C.] 2244(b)." Order, pp. 3-4.

3. Relief is justified because the Court's Order relying upon 28 U.S.C. 2244(b) to dismiss the Petition brought under 28 U.S.C. 2241 is mistaken and violates this Circuit's precedent. Zayas V. INS, 311 F.3d 247, 255 (3rd Cir. 2002) (28 U.S.C. 2244 does not apply to 28 U.S.C. 2241).

B. NEW INTERPRETATION

4. The Court's Order recognized that the Petition sought relief to correct the "retroactive application of the newly

expanded deadly weapon definition" contained within the "post-trial amendment to Delaware's statutory definition of deadly weapon to include 'baseball bat'" that violated both "ex post facto" and "due process". Order, pp. 2-3.

5. The Court's Order went on to dismiss the petition stated that the 28 U.S.C. 2241 "petition challenged the same 1988 convictions and sentences he presented" in his earlier 28 U.S.C. 2254 petitions (denied on questionable procedural grounds), and "Walls has failed to make a 'substantial showing of the denial of a constitutional right'." Order, pp. 3-4.

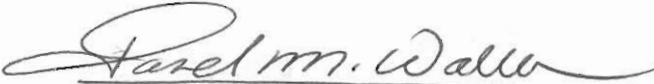
6. Relief is justified because the Court's Order is mistaken and violates both this Circuit's and Supreme Court's precedent in that this is the <sup>(a)</sup> first 28 U.S.C. 2241 petition, and <sup>(b)</sup> the Court failed to recognize that petitions brought within one year of a court decision which revealed the "simple, inevitable conclusion" that Petitioner could not have been guilty of the crimes for which he was convicted, demonstrates "actual innocence", violating due process or ex post facto, and excuses any procedural bars. Buckley V. Florida, 123 S.Ct. 2020, 2022, footnote \* (2003) (deadly weapon definition, prior petitions no bar, could not be guilty of crime, due process or ex post facto violated); Engle V. Isaac, 102 S.Ct. 1558, 1575-76 (1982) (to protect against fundamental miscarriages of justice procedural bars must yield to the imperative of correcting

a fundamentally unjust incarceration); In re Dorsainvil, 119 F.3d 245, 248, 253 (3rd Cir. 1997) (prior petitions no bar, substantive change/clarification, factually or legally innocent, "may resort to... 28 U.S.C. 2241"); In re Nwanze, 242 F.3d 521, 525 (3rd Cir. 2001) (prior petitions no bar, substantive change exposes factual or legal innocence, may resort to 28 U.S.C. 2241).

For these reasons, the Court's Order should be vacated and the 28 U.S.C. 2241 should be granted; or a COA should issue.

Date: November 14, 2005.

Respectfully submitted,

  
Joseph M. Walls

### ORDER

Having considered the Motion, the Order of November 2, 2005 is vacated and the Petition filed pursuant to 28 U.S.C. 2241 is hereby granted.

\_\_\_\_\_  
Date


\_\_\_\_\_  
Judge

AFFIDAVIT OF JOSEPH M. WALLS

I, Joseph M. Walls, do hereby swear under the penalty of perjury that all statements contained herein are true and accurate, that this Motion is submitted in good faith and not to cause delay, and that copies of this Motion have been served upon the parties listed below, on this date, by placing the motion in the prison mailbox to be delivered by first class mail.

1. Clerk  
Delaware District Court  
844 N. King Street  
Wilmington, DE 19801
2. Hon. M. Jane Brady  
Attorney General  
820 N. French Street  
Wilmington, DE 19801

Sworn to and Signed this 14<sup>th</sup> day of November, 2005.

  
Joseph M. Walls, A.A.S.  
DCC #107897 Bldg. 5-1  
1181 Padlock Road  
Smyrna, DE 19977

IM Joseph Wells  
SBI# 107897 UNIT 5  
DELAWARE CORRECTIONAL CENTER  
1181 PADDOCK ROAD  
SMYRNA, DELAWARE 19777



Clerk  
Delaware District Court  
844 N. King St.  
Wilm DE  
19801

19801+3519-99 C012

